LABOUR RELATIONS BOARD

Newfoundland and Labrador

2000 ANNUAL REPORT

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CONTENTS

Message from the Chairperson

Introductory Comments 1

Members of the Board 3

Caseload 9

Labour Relations Act:
- Certification of Bargaining Agents 10
- Revocation of Certification/Termination of Bargaining Rights 10
- Unfair labour practices 10
- Duty of Fair Representation 10
- Applications under Section 17 of the Act 11
- Common Employer 11
- Transfer of ownership/successorship 11
- Imposition of First Agreement 11
- Reconsideration or Amendment of Board Decisions 11

Public Service Collective Bargaining Act 12
Occupational Health and Safety Act 12
Fishing Industry Collective Bargaining Act 12
Teachers' Collective Bargaining Act 12

Judicial Review 13

Caseload Statistics 18
- Figure 1 - Applications for Certification received over 5-year period 18
- Figure 2 - Applications for Certification (No. of employees affected) 19
- Figure 3 - Comparative 5-year Analysis (Certification and Revocation) 19
- Figure 4 - Total new Applications filed in 2000 20
- Figure 5 - Budget Allocations (Estimates & Actuals 1996 - 2000) 21
- Figure 6 - Total Applications received over 5-year period 21

Reasons for Decision 22

MESSAGE FROM THE CHAIRPERSON

I am pleased to present the 2000 annual report on the activities of the Labour Relations Board. This was the 51st year of operation of the Board and this is my second report since being appointed as Chairperson.

The Province of Newfoundland is one of three provinces in Canada which contains a part-time Board structure. The Board consists of the Chairperson, one or more Vice-Chairpersons and Board members in numbers equally representative of employees and employers. The Board is supported by full-time professional staff with significant experience in administering the legislation.

During the year, the Chairperson took an extended leave from the Board to conduct a review of labour relations processes for offshore oil and gas fabrication and construction projects in the Province of Newfoundland. While the Chairperson conducted regular Board meetings throughout the year, Vice-Chairpersons Gerald O'Brien, James Oakley and Catherine Allen-Westby assumed responsibility for the conduct of Board hearings during the Chairperson's absence. On behalf of all Board members and staff, I wish to acknowledge the dedication and commitment of the Board's Vice-Chairpersons and to thank those whom the Board serves for their continued courtesy and professionalism.

As we embark upon the new millennium, the Board must work closely with employees, unions and employers if it is to respond effectively to new challenges and opportunities. Moreover, the Chairperson reaffirms his commitment to approach stakeholders with a view to receiving input that may assist or improve the functions of the Board.

Morgan Cooper.

Morgan Cooper
Chairperson
Labour Relations Board

INTRODUCTORY COMMENTS

The Labour Relations Board is an independent, quasi-judicial tribunal, which is established under the provisions of the Labour Relations Act, R.S.N. 1990, c L-1. It mediates and adjudicates a wide variety of disputes under a number of different statutes, including:

- Labour Relations Act
- Public Service Collective Bargaining Act
- Fishing Industry Collective Bargaining Act
- Teachers Collective Bargaining Act
- Interns and Residents Collective Bargaining Act
- Occupational Health and Safety Act

The Labour Relations Act contains provisions outlining the labour relations rights and responsibilities of employers, trade unions and employees. The Act guarantees employees the right to seek collective bargaining with their employers and establishes a framework for employees to make this choice freely.

The Act confers on the Board the authority over many important aspects of labour relations, including the certification of unions to represent employees, the revocation of certification upon application by an interested party or parties in cases where certified unions no longer have the support of a majority of the bargaining unit members, unfair labour practices, successor rights determinations and imposition of first collective agreements.

Under the Labour Relations Act, the Board has the exclusive jurisdiction to exercise the power conferred upon it and to determine all questions of fact or law that arise. Its decisions are not subject to appeal and a privative clause in the Act limits the scope of judicial review. The Board has the power to reconsider any of its decisions. It is also entitled to determine its own practices and procedures, and to make rules prescribing the procedures to be followed in respect of the administrative functions of the Board. These Rules of Procedure include, for example, provisions for determining a member in good standing of a trade union or association; enlarging or abridging time; and the responsibilities of the Chief Executive Officer and the Secretary of the Board.

Under the Public Service Collective Bargaining Act, the Board is also responsible for the issuing of orders declaring certain employees within a bargaining unit or bargaining units to be essential employees for the health, safety or security of the public.

The Board consists of five regular members; two representatives of employers; two representatives of employees and an independent chairperson. The personnel who served as regular members on the Board during 2000 were Max Taylor and Madonna Moss, representing employers; Marie St. Aubin and William Parsons, representing employees. Morgan Cooper served as Chairperson of the Board during the reporting period.

The Board is also composed of three Vice-Chairpersons and eight alternate members, four representatives of employers and four representatives of employees, who serve on the Board in the absence of regular members. During the year under review, James Oakley, Catherine Allen-Westby and Gerald O'Brien served as Vice-Chairpersons. William Alcock, Scott Wells, David Porter and John Peddle served as alternate employer representatives; and Raymond Reid, David Curtis, Jenesta Holloway and Diane Jacque served as alternate employee representatives.

The administrative duties and functions of the Board are supervised by the Chief Executive Officer with the aid of the Secretary. During 2000, Joe Noel was the Chief Executive Officer.

The Board offices are located in the Beothuck Building, Crosbie Place, St. John's, with hearings held throughout the province. The full-time staff of the Board consists of six persons which include the Chief Executive Officer, three Investigating Officers, Clerk-Stenographer and Clerk-Typist. Staff members of the Department of Environment and Labour are seconded on a temporary basis to act as Board Officers and Returning Officers for the Board when required.

During the year, there were a total of 102 new applications filed with the Board. 128 applications were carried forward from the previous year and the Board processed 112 applications during the period. The Board held 162 days of meetings, including hearing dates. A total of 28 hearings were held by the Board.

The Reasons for Decision issued by the Board during 2000 have been compiled in a separate publication and are available from the Board offices. For a listing of the Reasons issued, see pages 22-24 of this report. The full text of Board decisions is available on Quick Law.

Descriptions of bargaining units certified by the Board in 2000 are shown on pages 25-30.

The mailing address for the Labour Relations Board is P. O. Box 8700, St. John's, NF A1B 4J6. Telephone (709) 729-2707 Facsimile (709) 729-5738

■ *MEMBERS OF THE BOARD*

During the year under review, the Board consisted of the following members:

MORGAN COOPER, *Chairperson*

Morgan Cooper is an Assistant Professor of Business Law and Industrial Relations at Memorial University of Newfoundland's Faculty of Business Administration. He is a graduate from Dalhousie, University of Toronto and MUN. Besides being a labour arbitrator, he has been involved in a variety of labour relations initiatives. In 1997, Mr. Cooper was retained by the provincial government to consult with industry and labour stakeholders and to make recommendations for a labour relations framework for offshore oil production platforms. His report became the basis for legislative reforms introduced in the House of Assembly in December, 1997. In 2000, Mr. Cooper was retained by the provincial government to consult with industry and labour stakeholders and to make recommendations to facilitate stability on major construction and offshore oil and gas fabrication projects. His report was filed on January 19, 2001.

Mr. Cooper was appointed to the position of Chairperson of the Board in October, 1999 for a 5-year term, having previously served as Vice-Chairperson from January, 1998 - September, 1999.

JAMES C. OAKLEY, *Vice-Chairperson*

James Oakley obtained his Bachelor of Arts degree from the University of Alberta, Bachelor of Education degree from Memorial University and Bachelor of Laws degree from the University of Western Ontario. He has been a member of the Law Society of Newfoundland since April, 1980. He has been a member of the Panel of Arbitrators as approved by the Labour Management Cooperation Committee since 1986 and has also been selected by unions and employers to panels of arbitrators named in collective agreements. Mr. Oakley is a member of both the National Academy of Arbitrators and the Canadian Industrial Relations Association. He is a Chartered Arbitrator, designated by the Arbitration and Mediation Institute of Canada.

Mr. Oakley was appointed to the position of Vice-Chairperson of the Labour Relations Board in November 1999, having previously served as Vice-Chairperson from 1991 - 1998.

GERALD O'BRIEN, Q.C., *Vice-Chairperson*

Gerald O'Brien received his Bachelor of Arts (Hons) from Memorial University of Newfoundland in 1963 and a Bachelor of Education from there in 1964; he received his Bachelor of Laws Degree from Queen's University in 1968. He has been a member of the Law Society of Newfoundland since 1969 and was appointed a Queen's Counsel in 1988.

Mr. O'Brien has practised law since 1969 in St. John's, and during that practice has dealt extensively in Labour Law representing both unions and employers. He was appointed Vice-Chairperson of the Labour Relations Board in April, 1999 for a 5-year term.

CATHERINE A. ALLEN-WESTBY, *Vice-Chairperson*

Catherine A. Allen-Westby received her Bachelor of Nursing Degree from Dalhousie University in 1982 and Bachelor of Laws Degree from the University of Ottawa in 1985. She has been a member of the Law Society of Newfoundland since 1986. Ms. Allen-Westby worked as a Crown Attorney with the Department of Justice for a one year period. She has been carrying on a general law practice in Corner Brook since 1987. Ms. Allen-Westby was a Vice-Chairperson of the Workers' Compensation Appeal Division, formerly known as the Workers' Compensation Appeal Tribunal from 1989 to 1998.

Ms. Allen-Westby was appointed to the position of Vice-Chairperson of the Labour Relations Board in June, 2000 for a 5-year term.

MADONNA MOSS, *Employer Representative (Regular)*

Madonna Moss has been involved in the fishing industry since 1986, and has been a director of Happy Adventure Sea Products (1991) Limited since 1991. She served on the Board of Directors, as Director-at-Large for the Resource Sector, of the Newfoundland and Labrador Employers' Council from 1993 to 1995. She is currently an active member of Council and sits on the Labour Policy Committee.

Ms. Moss was appointed to the Labour Relations Board as an alternate employer representative in 1993, and was reappointed as a regular employer representative in December 1995, January 1998 and January 2000 for 2-year terms.

MAX TAYLOR, *Employer Representative (Regular)*

Max Taylor spent 15 years as a school board administrator and has been heavily involved in community life on the south coast of Newfoundland. He has served a term as Chairperson of the Economic Development Board for Zone 13 and is presently Chairperson of the South Coast Community Development Corporation as well as the Chairperson of the Provincial Association of CDCs and one of two Newfoundland representatives on the Pan-Canadian Association. Mr. Taylor is currently a member of the Edge Board.

Mr. Taylor was appointed to the Labour Relations Board as an alternate employer representative in January 1998 and was appointed as a regular employer representative in April, 1999.

WILLIAM A. PARSONS, *Employee Representative (Regular)*

William Parsons has over 30 years experience in the labour movement, serving as Vice-President of the Canadian Communications Workers' Union, Organizing Director of Fish, Food and Allied Workers Union and International Representative of the United Steelworkers of America. He is a Past President of the Newfoundland and Labrador Federation of Labour and Past Vice-President of the Canadian Labour Congress, as well as a Board Member of the Advisory Council on the Economy and member of the Labour Relations Working Group Initiative.

Mr. Parsons is currently Executive Director of the Newfoundland and Labrador Building and Construction Trades Council. He was appointed to the Labour Relations Board in 1994 as an alternate employee representative, and was reappointed as a regular employee representative in December 1995, January 1998 and January 2000 for 2-year terms.

MARIE ST. AUBIN, *Employee Representative (Regular)*

Marie St. Aubin has been Staff Representative with Retail Wholesale Canada, Division of the Canadian Autoworkers Union, for the past 12 years. She has an extensive background in the labour relations field, having served on various committees of the Newfoundland and Labrador Federation of Labour in the last 23 years, most recently serving as Secretary-Treasurer to the Federation of Labour. She has served as Executive Board Member of Retail Wholesale Canada's Board of Directors; and as Chairperson of Retail Wholesale Canada's National Women's Committee.

Ms. St. Aubin served as a member of the Workers' Compensation Appeals Tribunal from 1989 to 1994. She was appointed to the Labour Relations Board in 1991 as an alternate employee representative, in December 1994, December 1996 and January 1999 she was reappointed as a regular member for 2-year terms.

BILL ALCOCK, *Employer Representative (Alternate)*

Bill Alcock is the owner of Industrial Relations Management, a consulting firm in the human resources field. A member of the Labour Relations Board since 1974, Mr. Alcock has advised and represented employers in collective bargaining, grievance and arbitration handling since graduating from Memorial University in 1971 (B. Comm).

Mr. Alcock served for 13 years as the Director of Labour Relations for the Newfoundland Construction Labour Relations Association and for six years as part-time Executive Director of the Newfoundland and Labrador Employers' Council.

DAVE CURTIS, *Employee Representative (Alternate)*

Dave Curtis is Past President of the Newfoundland and Labrador Federation of Labour and Past President of the Newfoundland Association of Public Employees. Following thirty years involvement in the labour movement, Mr. Curtis retired from NAPE in 1997. He currently works as a labour relations consultant and serves as an arbitrator for the Canadian Motor Vehicle Arbitration Plan.

Mr. Curtis was appointed to the Labour Relations Board as an alternate employee representative in January 1998 and was reappointed in February 2000 for a 2-year term.

JENESTA HOLLOWAY, *Employee Representative (Alternate)*

Jenesta Holloway is an Education Coordinator for the Central East Health Care Institutions Board and her primary responsibility involves computer training for staff. She served on the Board of Directors of the Newfoundland and Labrador Nurses Union from 1984-1996, in the positions of Regional Vice-President and Provincial Vice-President. She is currently a Review Commissioner for the Workers' Compensation Review Division.

Ms. Holloway was appointed to the Labour Relations Board as an alternate employee representative in January 1998 and was reappointed in February 2000 for a 2-year term.

DIANE JACQUE, *Employee Representative (Alternate)*

Diane Jacque has just moved from Goose Bay, Labrador to St. John's as a dispatcher with Newtel Communications. During her 25 years working in Goose Bay, Diane was involved in numerous union and community activities, including President of Newtel Pioneers for Goose Bay, Volunteer Co-ordinator for the Labrador Winter Games, President of the Ladies Golf Association in Goose Bay and other committees and boards.

Ms. Jacque was appointed to the Labour Relations Board as an alternate employee representative in February 2000 for a 2-year term.

JOHN F. PEDDLE, *Employer Representative (Alternate)*

John F. Peddle is the Executive Director of the Newfoundland and Labrador Health Boards Association, a position he has held since 1995. Prior to this, he was Director of Labour Relations with the Association from 1976. Mr. Peddle has advised Employers, in both the public and private sectors, in collective bargaining and other labour relations and human resource issues for over twenty-five (25) years. Since the formation of the Newfoundland and Labrador Employers' Council, Mr. Peddle has been actively involved with Council both as an Executive member and Director, including a term of office as Chair. He currently chairs the Labour Policy Committee of Council.

Mr. Peddle graduated from Memorial University in 1971 which a B.Comm., majoring in Industrial Relations and Human Resources. He was appointed to the Labour Relations Board as an alternate employer representative in August 2000.

DAVID J. PORTER, *Employer Representative (Alternate)*

David Porter is currently the Vice President of Human Resources for the Iron Ore Company of Canada in Labrador City, Newfoundland. He has worked in the mining and steel industries for a number of years for such companies as Inco, Rio Algom Limited, Lornex Mining Corporation and Atlas Steels. He has served on Boards of Directors of Boart Canada Limited, Bristo Machine Works and Lornex Copper Corporation. He has also served as a member on the British Columbia Labour Relations Board.

Mr. Porter was appointed to the Newfoundland Labour Relations Board as an alternate employer representative in January 1998 and was reappointed in February 2000 for a 2-year term.

MICHAEL J. POWER, *Jurisdictional Umpire*

Michael J. Power has been involved in the labour movement with the International Brotherhood of Electrical Workers (IBEW) since 1977, as President/Business Manager of Local 2351, Churchill Falls. In 1992, he was appointed as an International Representative for the IBEW, the position he still holds today. Mr. Power was a member of the Labour Relations Working Group Initiative of the Advisory Council on the Economy and the Construction Industry Industrial Adjustment Services (IAS) Committee. He is currently a member of the Board of Directors of the Newfoundland and Labrador Construction Safety Association, a position held since its inception.

Mr. Power was first appointed to the Labour Relations Board as an alternate employee representative in December 1995 for a 2-year term. He was appointed as Jurisdictional Umpire with the board in May 2000 for a 2-year term.

RAYMOND REID, *Employee Representative (Alternate)*

Raymond Reid has been a Firefighter with the City of Corner Brook Fire Department for 28 years, and presently holds the rank of 1st class Lieutenant. He has been involved with the International Association of Firefighters for approximately 26 years, and is past President of Local 1222 of the Firefighters' Association. He is also past President of the Atlantic Provinces Professional Firefighters' Association.

Mr. Reid was appointed to the Labour Relations Board as an alternate employee representative in 1989.

RAYMOND M. RYALL, *Jurisdictional Umpire*

Raymond M. Ryall has been involved in the labour movement for over 30 years, serving in various capacities with the International Union of Bricklayers and Allied Craftsmen, including President and Business Manager of Local #1 and International Representative of the union. Mr. Ryall has also served as President of the Newfoundland and Labrador Building and Construction Trades Council, Vice- President of the Oil Development Council and Chairperson of the Atlantic Provinces Trowel Trades Conference. He recently served as Organizing Co-ordinator for a two-year term with the Newfoundland and Labrador Building and Construction Trades Council. He is currently employed as the Newfoundland and Labrador International Building Trades Petroleum Development Association Site Representative at the Terra Nova Project, Bull Arm, Newfoundland.

Mr. Ryall was appointed to the Labour Relations Board as Jurisdictional Umpire in December 1999 for a 2-year term.

SCOTT WELLS, *Employer Representative (Alternate)*

Scott Wells has been General Manager of Island Roofing Co. Ltd. for the past eighteen years. With an extensive background in construction management, he has also been providing consulting services in the building trades and design-build areas. He is highly involved in the community serving as Mayor of the Town of Cox's Cove for the past eight years and President of the Great Humber Joint Council for the last three years.

Mr. Wells was appointed to the Labour Relations Board as an alternate employer representative in January 1998 and was reappointed in February 2000 for a 2-year term.

■ *CASELOAD*

In 2000, the Board received a total of 102 applications and complaints, and the Board dealt with a total of 112 applications during the period.

In this portion of the report, we will comment on hearings and representation votes, as well as review the various types of applications processed by the Board during the reporting period under the pieces of legislation administered by the Board.

♦ HEARINGS

The Board sits in panels of three, with the Chairperson or Vice-Chairperson in each case, together with an employee representative and an employer representative. Most hearings take place in St. John's, however, in appropriate cases, the Board holds hearings in the location closest to the workplace. In this reporting period, panels also sat in Corner Brook, Gander, Stephenville and Goose Bay.

During the 2000 calendar year, the Board conducted 28 hearings over 140 days. This compares with 25 hearings over 87 days during 1999. The Board has experienced difficulties in the scheduling and postponement of hearing dates in recent years and is continuing its efforts to realize greater efficiencies in this area.

♦ REPRESENTATION VOTES

In 2000, the Board's returning officers conducted a total of 34 representation votes among employees. Of the votes conducted, 31 involved certification applications and three votes were held in applications for termination of existing bargaining rights.

All votes involved a single union on the ballot. A total of 1,826 employees were eligible to vote in the elections that were conducted.

LABOUR RELATIONS ACT

♦ CERTIFICATION OF BARGAINING AGENTS

The Board received 39 applications for certification, carried forward 21 from the previous year and processed 45 certification applications during the year. Where the applicant trade union shows 40% employee support within the proposed bargaining unit, the Labour Relations Act provides that a representation vote be taken. Of the 45 applications processed, 67% achieved certification. 30 applications were granted, 14 were rejected and one was withdrawn.

There were approximately 822 employees affected by certification orders issued by the Board in 2000.

♦ REVOCATION OF CERTIFICATION/ TERMINATION OF BARGAINING RIGHTS

Two applications for revocation of certification were filed with the Board in 2000, three were carried forward from the previous year. Of the total cases processed, two certification orders were revoked and two applications were rejected. There were 28 employees affected by the revocation orders of the Board.

♦ UNFAIR LABOUR PRACTICES

In 2000, the Board received 22 complaints alleging contravention of the unfair labour practice sections of the Act and carried forward 15 such complaints from the previous year. In complaints against employers, the principal allegations involved failure to bargain in good faith, interference with the selection of a trade union and alteration of terms and conditions of employment. Where employers complained against unions, allegations involved organizing activities.

Of the 23 complaints dealt with by the Board, remedial orders were issued in three cases, 11 were settled/withdrawn, four complaints were rejected and five were lapsed.

♦ DUTY OF FAIR REPRESENTATION

Section 130 of the Act deals with complaints alleging failure of a bargaining agent to act in good faith in the handling of a grievance an employee has against the Employer. Six such applications were received in 2000 and four were carried forward from the previous year. Of the seven applications processed, six were rejected and one was lapsed.

♦ APPLICATIONS UNDER SECTION 17 OF THE ACT

Applications can be made to the Board under Section 17 of the Act, for a determination of matters referred to in paragraph 18(k), such as, whether a person is an employer or employee, a person is a member in good standing of a trade union, or a person or organization is a party to or is bound by a collective agreement. There was one such application received in 2000 and three were carried forward from 1999. Of the two processed by the Board, one was granted and one was lapsed.

♦ COMMON EMPLOYER

In 2000, the Board received four applications alleging that more than one business was being carried on under common control or direction and requesting that the Board declare the businesses to be one employer for the purposes of the Act and one such application was carried forward from 1999. Two of these applications were withdrawn.

♦ TRANSFER OF OWNERSHIP/SUCCESSORSHIP

In 2000, the Board received two applications alleging that there had been a sale, lease, transfer or other disposition of business, and carried six forward from the previous year. The two applications processed by the Board were granted.

♦ IMPOSITION OF FIRST AGREEMENT

Referrals can be made by the Minister requesting the Board to inquire into a dispute and, if advisable, to settle the terms and conditions for the first collective agreement. Four applications were carried forward from the previous year. The Board decided to settle the terms and conditions for the first collective agreement in one case and is currently hearing evidence on those terms and conditions.

♦ RECONSIDERATION OR AMENDMENT OF BOARD DECISIONS

There were four applications received during this reporting period to reconsider previous decisions of the Board, and seven applications to amend existing bargaining units. Four applications were carried forward from 1999. Of the three reconsideration applications processed, two previous orders were rescinded which resulted in certification orders being revoked and one was rejected. Of the three applications to amend existing bargaining units processed, one was granted, one was rejected and one was withdrawn.

PUBLIC SERVICE COLLECTIVE BARGAINING ACT

There were only three applications filed under this piece of legislation during 2000. All were applications to amend existing bargaining units and eight such applications were carried forward from the previous year. Three of them were withdrawn and hearings have been scheduled in most of the others.

Two applications for certification were processed by the Board in during the reporting period. One was withdrawn and one was lapsed. One application for revocation of certification was rejected by the Board.

There are three applications currently before the Board which involve questions arising from transfers of business in the health care sector. In one of these cases, the Board reconfigured the bargaining units and ordered a vote of employees to determine which of two bargaining agents will represent the employees.

Five complaints made by aggrieved employees against their bargaining agent were lapsed in the reporting period.

OCCUPATIONAL HEALTH AND SAFETY ACT

The Board has authority under Section 51 of the Occupational Health and Safety Act to determine whether an employer has taken discriminatory action against a worker for a reason set out in Section 49 of the Act. There were two applications received by the Board under the Occupational Health and Safety Act during 2000. One has been settled/withdrawn and the other is pending.

FISHING INDUSTRY COLLECTIVE BARGAINING ACT

There were no applications received under this piece of legislation in 2000.

TEACHERS' COLLECTIVE BARGAINING ACT

There was one application to amend the existing bargaining unit received under this legislation during 2000. This application is pending before the Board.

■ *JUDICIAL REVIEW*

♦ CASES DECIDED IN 2000

The following are summaries of court cases decided in 2000 which reviewed decisions or proceedings of the Board.

1. Transport and Allied Workers Union, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. N.C.L.R.A. et.al. (Parsons Trucking) (**1999 01 T1679**)

Facts: Union filing complaint with the Board alleging the Newfoundland Construction Labour Relations Association (NCLRA) failed to engage in collective bargaining on behalf of Parsons Trucking. Chair of panel hearing complaint also member of law firm representing two members of NCLRA.

Issues: (1) Whether allegations of a reasonable apprehension of bias on the part of the Chair sustained? (2) Whether certain evidence and procedural rulings by the panel amount to actual bias on the part of the Chair?

Held: Decision of Russel, J. rendered January 21, 2000. Circumstances giving rise to a reasonable apprehension of bias. Interim awards and rulings of the panel set aside and matter remitted to the Board to constitute a new panel to hear the original complaint.

2. William May v. Newfoundland Association of Public Employees (**1999 G.F. No. 75**)

Facts: Board receiving an application pursuant to section 43 of the *Public Service Collective Bargaining Act* alleging failure on the part of NAPE to bring a grievance to arbitration. Board dismissing the Application.

Issues: (1) Does the Board have jurisdiction under the *Public Service Collective Bargaining Act* to order that an individual employee be made a party to a collective agreement for the purpose of pursuing a dispute to arbitration? (2) If so, did the Board commit reversible error in refusing to so name May?

Held: Decision of Orsborn J. rendered January 24, 2000. Application dismissed. Section 43 does not give the Board the jurisdiction to receive and consider an application such as that brought by May, neither does it give the Board the jurisdiction to make an order that an employee is to be considered party to the collective agreement. Section 43 confers only a jurisdiction to make rules of general application.

3. Bowringer Engineering Limited v. International Association of Bridge, Structural and Ornamental Iron Workers, Local 764, et.al. (**1998 St. J. No. 3691**)

Facts: Union certified as bargaining agent following vote pursuant to s. 47 of the *Act*. Ballots destroyed. Certification order set aside by the Supreme Court of Newfoundland Trial Division on a finding of reasonable apprehension of bias. Matter remitted to new panel of Board. Board finding Bowringer to be employer. Board determining no jurisdiction to hold further vote under s. 47 of the *Act* but finding authority under sections 38 and 46.

Issues: 1) Whether Board has jurisdiction to order a second vote in the circumstances? 2) Whether Board can amend the unit applied for?

Held: Decision of Russel J. rendered February 29, 2000. Application dismissed. Applying a pragmatic and functional analysis to determine the Board's jurisdiction, the Court concluded the Board had the jurisdiction under section 38 to conduct a second vote and it was not a patently unreasonable decision in the circumstances to order the taking of such a vote. It was unnecessary to determine whether or not the Board could also have taken a vote under s. 47 of the Act. Further, while the Board is obliged to consider the unit applied for, it is not restricted to certifying only the unit applied for. The Board acted within its jurisdiction and did not make a patently unreasonable determination of the bargaining unit.

4. The North West Co. Inc. v. Construction General Labourers, Rock and Tunnel Workers, Local 1208 (**1999 St. J. No. 0682**)

Facts: Majority of Board rejecting application for certification on basis that supporting documentation neither established membership nor constituted an application for membership. Decision of Lang, J. rendered June 22, 1999 quashing Board decision and remitting the matter for further consideration.

Issue: Sufficiency of proof of membership submitted with Application for Certification?

Held: Decision of Court of Appeal rendered April 26, 2000. Appeal dismissed. Majority of the Board fell into manifest error in giving a literal interpretation to the cards, instead of a broad and wide one which clear legislative policy directs must be the approach in applying remedial legislation, such as a certification provisions which the union was invoking in the circumstances at bar.

Note: Application for Leave to Appeal to the Supreme Court of Canada dismissed February 1, 2001.

5. Sea Crest Corporation of Canada v. UFCW, Local 1252 (**2000 St. J. No. 2484 and 2000 St. J. No. 1519**)

Facts: Two unions in protracted conflict to represent fisheries workers. One voluntarily recognized by employer, the other applying again for certification within six months of having been rejected by the Board. Injunction sought alleging Board without jurisdiction to entertain application as contrary to Board Rules and Act. Rule 18(1) requiring special leave in the circumstances. Section 36(4) of the Act requiring a determination as to whether a collective agreement in force. Board moving to take representation vote and seal ballots and then determine issues.

Issue: Does the Board have authority, in the circumstances, to hold a representation vote, seal the ballots and then decide all issues necessary (including, whether it can entertain an application for certification and whether there is a collective agreement in force) before deciding whether to grant certification.

Held: Decision of Rowe, J. rendered June 23, 2000. Application for Injunction denied. Board did have the authority to proceed as it did. Where the Board has jurisdiction to deal with a certification application, how it exercises that jurisdiction is accorded a high degree of curial deference.

6. Amalco Foods (Dominion Stores Division) v. Retail Wholesale Canada (**2000 01T-0270**)

Facts: Union applying to amend certification order to include employees of newly created specialty outlets including those designated manager. Board allowing the amendment relying on Investigating Officer's Report and declining to hold hearing. Board finding no evidence that managers have clear and final authority to hire, fire or discipline.

Issue: Whether Board's findings supported by evidence? Whether Board's decision patently unreasonable?

Held: Decision of Wells J. rendered October 2, 2000. (1) Board decision to include "regular" employers of specialty outlets reasonable. (2) Board decision to include managers of specialty outlets, patently unreasonable. Board finding of "no evidence that either manager had clear and final authority to hire, fire or discipline" contrary to and unsupported by the evidence. Board decision respecting managers set aside and referred back to Board for reconsideration.

7. Memorial University of Newfoundland v. Canadian Union of Public Employees, Local 1615 (**1997 St. J. No. T2831**)

Facts: Board asked to determine whether position of Biomedical Technologist IV should be excluded from bargaining unit. Hearing not held nor requested. Board deciding matter in favour of union on basis of written replies and Investigating Officer's Report. Board reasons disclosing factual errors and omissions likely flowing from Investigating Officer's Report.

Issue: (1) Whether factual errors and omissions material? (2) Whether failing to provide employer with employee list prepared by union denial of natural justice in the circumstances.

Held: Decision of Adams, J. rendered October 5, 2000. Board decision patently unreasonable. Errors and omissions were in relation to organization structure which was a significant element of the Board's decision and thus material. The employee list prepared by the Union contained factual errors and in any event should have been provided to the employer for comment. Failure to do so amounted to a denial of natural justice. Board's decision set aside and matter remitted for further determination.

8. Milley's Contracting Limited v. International Union of Bricklayers and Allied Craftworkers, Local #1 (**1999 St. J. No. T 1775**)

Facts: Union applying, pursuant to s. 93 of the Act, for declaration of a sale, lease, transfer or other disposition of the business of Milley's Contracting to Milley's Contracting Ltd. Board applying concept of "key person" and finding the skill and expertise of Murdock Milley to be key to both entities. Hiatus of 5 years not precluding a finding of successorship in the circumstances. Majority of Board finding a transfer or disposition.

Issue: Whether the evidence, viewed reasonably, supports the Board's findings of fact.

Held: Oral decision of Mercer, J. rendered December 21, 2000. Application denied. The test for judicial review is a severe one. On a review of the transcript and the record, Court finding evidence on which the Board could make its findings of fact. Board's factual conclusions not patently unreasonable.

9. Newfoundland and Labrador Regional Council of Carpenters and Allied Workers v. Construction General Labourers, Rock and Tunnel Workers, Local 1208 and McNamara Construction Company (**2000 T01 2616**)

Facts: Carpenters Union applying to the Board pursuant to section 9.1 of the *Act* for the appointment of a jurisdictional umpire to settle a jurisdictional dispute between two unions. Section 9.1(4) requiring an umpire to consider, *inter alia*, decisions of other adjudicative bodies. Umpire determining that a prior decision of a consensual umpire under a collective agreement not a decision of an "other adjudicative body" within the meaning of section 9.1(4) of the *Act*.

Issue: (1) Appropriate test on review? (2) Whether Umpire committed reversible error in deciding as he did?

Held: Decision of Lang J. rendered January 25, 2001. Application dismissed. The Appropriate test on review is that of patently unreasonable. Here the decision of the umpire is entirely reasonable. He did not err in law or otherwise exceed his jurisdiction.

10. United Brotherhood of Carpenters and Joiners of America, Local 579 v. S.E.A. Contracting Limited (**1998 St. J. No. 4006**)

Note: Notice of Appeal filed by S.E.A. Contracting June 9, 1999. Appeal deemed abandoned by Notice of the Court of Appeal dated January 24, 2001.

11. Trevor Compton and Dean McAuley v. United Brotherhood of Carpenters and Joiners of America, Local 579 **(1999 C.B. No. 16)**

Note: Notice of Appeal filed by Carpenters' Union. Appeal deemed abandoned by Notice of the Court of Appeal dated January 24, 2001.

♦ CASES STILL OUTSTANDING (FILED IN 2000 & PRIOR)

The following applications were still outstanding as at the end of the year.

1. Newfoundland Association of Public Employees v. Irene Gray et. al. **(1995 St. J. No. 2784 and 2462)**

Status: Notices of Appeal filed by Gray & Stanford and NAPE, 15 October, 1998. Applicants have not moved to bring on the Charter issues.

2. CUPE v. Civic Centre Corporation, et al. **(2000 01 T 2839)**

Facts: Board requested to determine the true employer of employees employed at the St. John's Memorial Stadium. Board finding a sale, lease, transfer or other disposition of a business as between the City of St. John's and the Civic Centre Corporation, pursuant to section 93 of the Act.

Issue: (1) Whether Board decision patently unreasonable?

Status: Matter scheduled for February 1, 2001 but adjourned to later date.

3. Hibernia Management Development Company Ltd. v. FFAW/CAW and Communications, Energy and Paperworkers Union of Canada, Local 97 **(2000 01 T 3277)**

Facts: Competing unions, on application for certification, alleging purported employer in breach of section 45 statutory freeze (Labour Relations Act). Section 38 of the Act deeming the licensed operator of an offshore petroleum production platform the employer for purposes of an application for certification.

Issue: Whether the licensed operator of an offshore oil production platform is the deemed employer for all purposes of the Act including a section 45 statutory freeze complaint?

Status: Matter adjourned, *sine die*.

This report includes the following statistical reports:

Figure 1 Applications for Certification received over 5 year period (Labour Relations Act)

Figure 2 Applications for Certification (No. of employees affected 1992 - 2000)

Figure 3 Comparative 5-year Analysis (Disposition of Applications for Certification and Revocation - Labour Relations Act) 1996 - 2000

Figure 4 Total new applications filed in 2000

Figure 5 Budget Allocations (Estimates & Actuals) 1996 - 2000

Figure 6 Total applications received over 5-year period 1996 - 2000

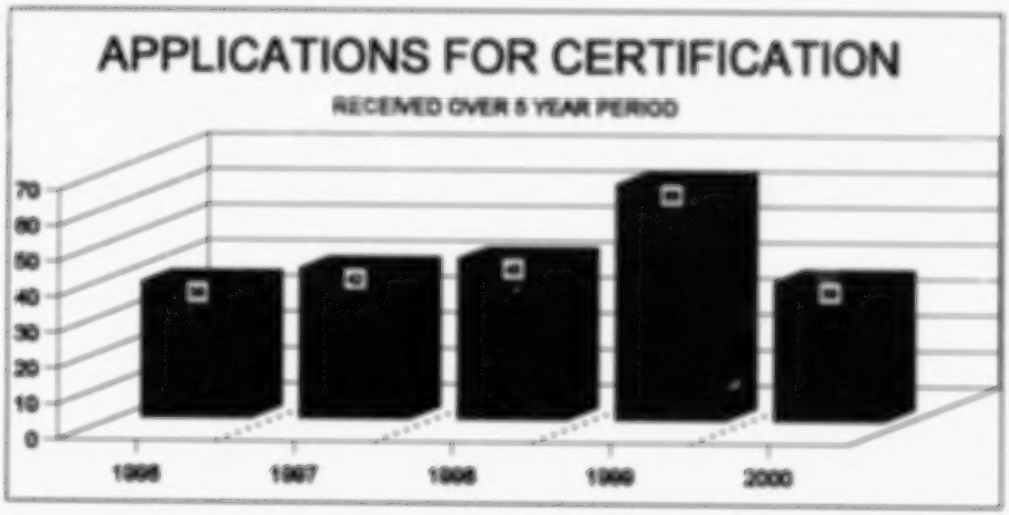

Figure 1

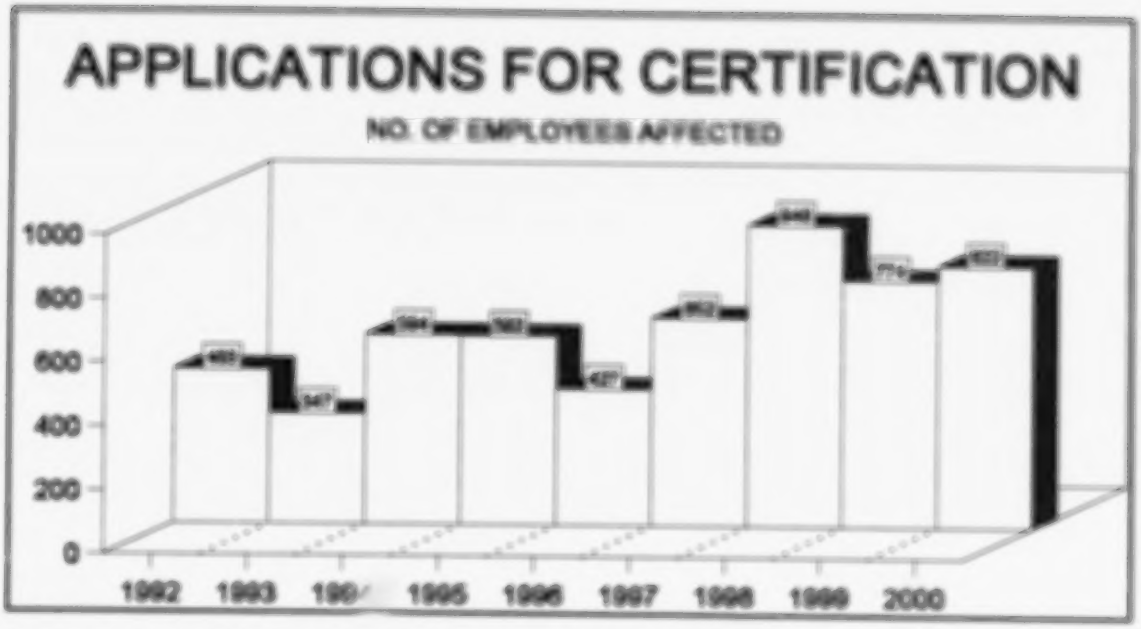

Figure 2 (Note: The figure shown for 1998 includes 439 fishers.)

COMPARATIVE 5-YEAR ANALYSIS
DISPOSITION OF APPLICATIONS FOR CERTIFICATION AND REVOCATION
1996-2000

Type & Year	Received	Granted	Rejected	Withdrawn	Lapsed
Certification					
1996	38	33	12	4	2
1997	42	20	13	5	0
1998	45	24	14	5	1
1999	66	30	21	7	2
2000	39	30	14	1	0
Revocation					
1996	9	6	3	2	1
1997	4	5	1	0	0
1998	7	3	1	1	0
1999	5	1	2	1	0
2000	2	2	2	0	0

Figure 3

TOTAL NEW APPLICATIONS FILED IN 2000

	2000
Labour Relations Act:	
Applications for Certification	39
Applications for Revocation of Certification	2
Termination of Bargaining Rights	0
Unfair Labour Practices	22
Duty of Fair Representation	6
Imposition of First Agreement	0
Reconsideration of Decision	4
Amendment of Bargaining Unit	7
Transfer of Ownership/Successorship	2
Collective Agreement in Effect	1
Common Employer	4
Referrals by Arbitrators	1
Access to Remote Site	0
Change Name on Certification/Accreditation Order	3
Jurisdictional Dispute (Umpire)	1
Alter terms and conditions of employment (s. 45)	2
Special Leave of Board pursuant to Rule 18 1	
Successor Bargaining Agent	1
Public Service Collective Bargaining Act	3
Fishing Industry Collective Bargaining Act	0
Occupational Health and Safety Act	2
Teachers' Collective Bargaining Act	1
TOTAL APPLICATIONS	102

Figure 4

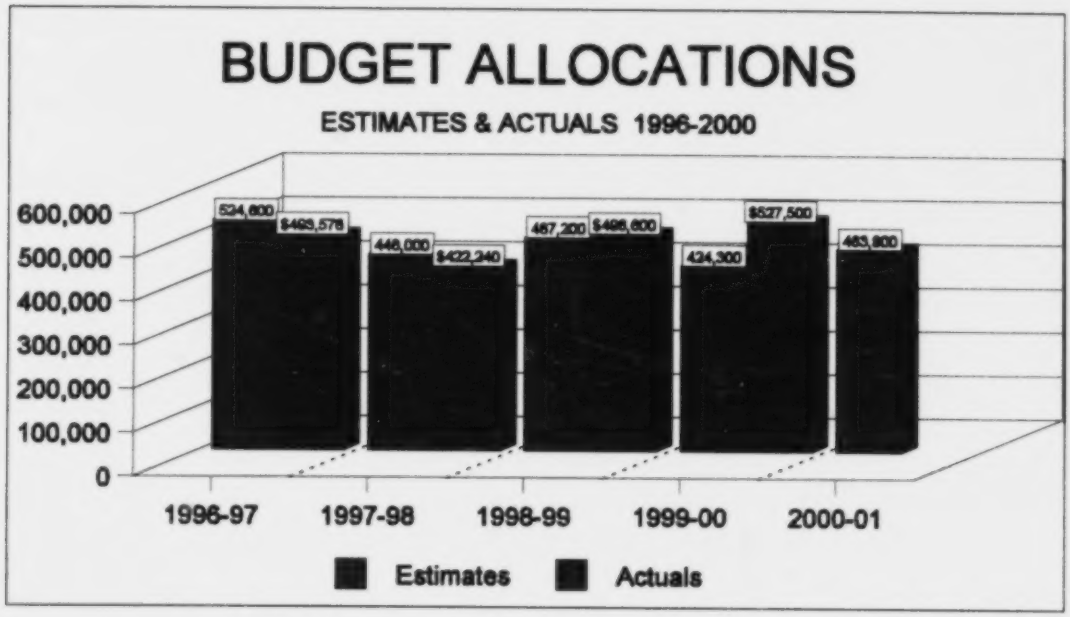

Figure 5 Note: Actual figures for 2000-01 fiscal year are not yet available.

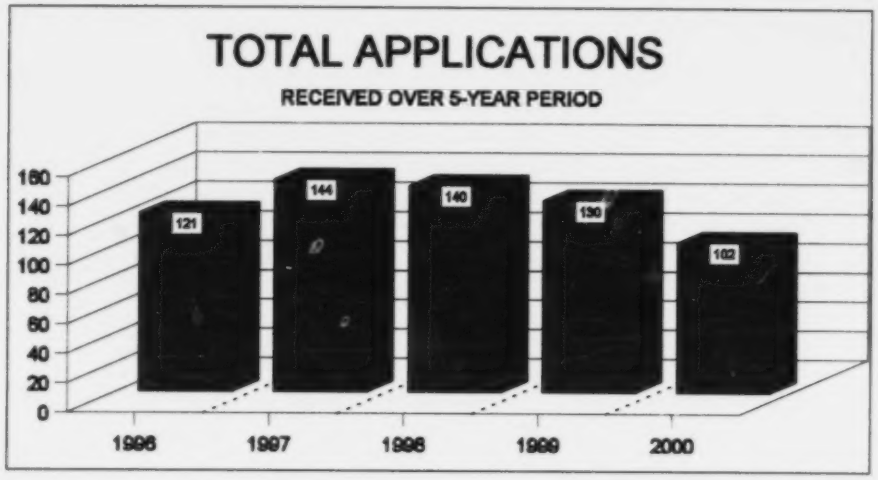

Figure 6

■ *REASONS FOR DECISION*

♦ **Section 36 of the Labour Relations Act**
Applications for Certification

1. Newfoundland and Labrador Regional Council of Carpenters, Millwrights and Allied Workers, Local 579 and 10660 Newfoundland Inc. dated 26 January, 2000. (712:2758)

2. United Steelworkers of America, Local 9342 and Canadian Corps of Commissionaires, Newfoundland Division dated 7 April, 2000. (712:2777)

3. Fish, Food and Allied Workers Union (FFAW/CAW) and AOC Brown & Root Canada Ltd. dated 14 April, 2000. (712:2794)

4. United Food and Commercial Workers, Local 1252 and Cabot Call Centre Inc. and/or Special Projects Unit Call Centre Inc. dated 22 November, 2000. (712:2814)

♦ **Section 122 of the Labour Relations Act**
Unfair labour practice complaints

5. Cabot Call Centre Inc. and United Food and Commercial Workers, Local 1252, Wayne Ralph, Judy Hanlon, Linda Hyde and Bren Hogan dated 22 November, 2000. (118:517) Dissent of David Curtis dated 27 December, 2000. (712:2814 & 118:517)

6. Newfoundland and Labrador Association of Public and Private Employees and Makkovik Town Council dated 28 July, 2000. (118:504)

7. Transport and Allied Workers Union, Local 855 and Newfoundland Construction Labour Relations Association and Parsons Trucking Limited and Labourers' International Union of North America, Local 1208 dated 7 December, 2000. (118:467) Preliminary Ruling

8. Communications, Energy and Paperworkers Union of Canada, Local 97 and Fish, Food and Allied Workers Union (FFAW/CAW) and Hibernia Management and Development Company Ltd. and AOC Brown & Root Canada Ltd. and V.B. Offshore Accommodations Management Ltd. and Crosbie Salamis Ltd. and Albert Smith, et al. dated 20 December, 2000. (118:508 & 118:510) Preliminary Ruling

- **Section 93 of the Labour Relations Act**
  Transfer of Business/Successorship

9. United Food and Commercial Workers, Local 1252 and Country Ribbon Inc. dated 30 November, 2000. (545:150)

- **Section 130 of the Labour Relations Act**
  Duty of Fair Representation

10. Freeman Snow and Newfoundland and Labrador Regional Council of Carpenters, Millwrights and Allied Workers and A.L. Stuckless and Sons Limited dated 6 October, 2000. (126:109)

- **Section 81 of the Labour Relations Act**
  Imposition of First Collective Agreement

11. Honourable Oliver Langdon, Minister of Environment and Labour and Newfoundland and Labrador Association of Public and Private Employees and St. John's Independent School (Lakecrest) dated 30 November, 2000. (780:42)

- **Section 9.1 of the Labour Relations Act**
  Determination of Jurisdictional Dispute

12. United Brotherhood of Carpenters and Joiners of America, Local 579 and Construction General Labourers, Rock and Tunnel Workers, Local 1208 and McNamara Construction Company dated 23 August, 2000. (790:4)

- **Section 6 of the Public Service Collective Bargaining Act**
  Applications for Certification

13. Canadian Merchant Service Guild and Government of Newfoundland and Labrador, as represented by The Treasury Board and Newfoundland Association of Public Employees dated 12 July, 2000. (1000:157)

♦ **Section 8 of the Fishing Industry Collective Bargaining Act Applications for Certification**

14. United Food and Commercial Workers, Local 1252 and Fisheries Association of Newfoundland and Labrador and its member operators and all other fish operators in the Province of Newfoundland excluding Fogo Island and communities North of Makkovik and Fish, Food and Allied Workers Union dated 14 February, 2000. (810:121)

♦ **Decisions on tape recording of hearings before the Board**

15. Newfoundland Association of Public Employees and Her Majesty the Queen in Right of Newfoundland, represented by Treasury Board and Grenfell Regional Health Services Board and Canadian Union of Public Employees and Association of Allied Health Professionals dated 25 April, 2000. (1039:39)

16. Drycore Electric Inc. and International Brotherhood of Electrical Workers, Local 2330 dated 24 July, 2000. (118:501)

■ *BARGAINING UNITS*

APPLICATIONS FOR CERTIFICATION GRANTED IN 2000

1. International Association of Bridge, Structural and Ornamental Iron Workers, Local 764 and MECNOR Inc.

   Bargaining Unit

   A unit of employees of MECNOR Inc. comprising Ironworkers.

2. Construction General Labourers, Rock and Tunnel Workers, Local 1208 and Montage d'Acier International Inc.

   Bargaining Unit

   A unit of employees of Montage d'Acier International Inc. comprising Surveyors and Labourers.

3. Construction General Labourers, Rock and Tunnel Workers, Local 1208 and Consbec Inc.

   Bargaining Unit

   A unit of employees of Consbec Inc. comprising Watchmen, Flagpersons, General Labourer Persons, Pump Persons, Spotters, Grades Person, Rod Person, Chain Person, Truck Persons (under 5 tons), Pipe Layer/Setter, Cement Mixer Operator, Cement Finisher, Asphalt Raker, Utility Pump Person, Instrument Person, Truck Drivers (off highway trucks), Drivers (semi-trailer 5th wheel), Powder Person, Blaster.

4. International Union of Painters and Allied Trades, Local 1984 and Coating Solutions Corporation.

   Bargaining Unit

   A unit of employees of Coating Solutions Corporation comprising Painters/Sandblasters.

5. International Association of Heat & Frost Insulators & Asbestos Workers, Local 137 and Atlantic Industrial Insulation Inc.

   Bargaining Unit

   A unit of employees of Atlantic Industrial Insulation Inc. comprising Insulators employed in the Industrial and Commercial Division of the Construction Industry.

6. Transport and Allied Workers Union, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Harvey and Company Limited, Grand Falls.

Bargaining Unit

A unit of employees of Harvey and Company Limited comprising Mechanics and Service Desk Employees employed by the Employer at Grand Falls.

7. Transport and Allied Workers Union, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Harvey and Company Limited, Grand Falls.

Bargaining Unit

A unit of employees of Harvey and Company Limited comprising Parts Clerks employed by the Employer at Grand Falls.

8. United Brotherhood of Carpenters and Joiners of America, Local 579 and Newfoundland Maintenance Services Limited.

Bargaining Unit

A unit of employees of Newfoundland Maintenance Services Limited comprising all employees engaged in yard and warehouse work at the Company's premises on Logy Bay Road, St. John's and at such other locations where such work is performed on behalf of clients of the Company, save and except Managers, Supervisors, Technical and Administration Staff.

9. Transport and Allied Workers Union, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Canadian Offshore Industries Limited.

Bargaining Unit

A unit of employees of Canadian Offshore Industries Limited comprising all employees save and except President, Office Staff, Non-working Foreman and those above the rank of Non-working Foreman employed by the employer at its pipeyard at St. Anne's Industrial Park, Mount Pearl, Newfoundland.

10. International Union of Operating Engineers, Local 904 and East Coast Marine and Industrial Ltd.

Bargaining Unit

A unit of employees of East Coast Marine and Industrial Ltd. comprising all Welders, Welder Apprentices, Millwrights, Millwright Apprentices, Machinists, Machinist Apprentices and Helpers.

11. Newfoundland and Labrador Association of Public and Private Employees and Marble Mountain Management Corporation.

Bargaining Unit

A unit of employees of Marble Mountain Management Corporation comprising all employees save and except General Manager, Chief Operating Officer, Chief Financial Officer, Chef, Head of Ski Patrol, Head of Ski School and Administrative Assistant.

12. United Steelworkers of America, Local 9342 and Canadian Corps of Commissionaires, Newfoundland Division.

Bargaining Unit

A unit of employees of Canadian Corps of Commissionaires, Newfoundland Division comprising all employees employed in the City of St. John's, Castle Hill and Cape Spear save and except Chief Executive Officer, Operations Manager, Comptroller, Office Staff, Investigators, Site Managers and those above the rank of Site Manager.

13. Newfoundland and Labrador Association of Public and Private Employees and Marquis Ltd.

Bargaining Unit

A unit of employees of Marquis Ltd. comprising all employees employed by the Employer at its Kentucky Fried Chicken store at Chapel Hill Road, Deer Lake save and except Manager.

14. United Steelworkers of America, Local 9342 and Seaway Security Limited.

Bargaining Unit

A unit of employees of Seaway Security Limited comprising all employees save and except Manager.

15. Canadian Union of Public Employees, Local 4350 and Rocky Harbour Council.

Bargaining Unit

A unit of employees of Rocky Harbour Council comprising all employees save and except Town Clerk.

16. United Food and Commercial Workers, Local 1252 and Chancellor Park Inc.

Bargaining Unit

A unit of employees of Chancellor Park Inc. comprising all employees employed at 270 Portugal Cove Road, St. John's, NF save and except President, Executive Director, Directors, Financial Assistant and Secretary.

17. Construction General Labourers, Rock and Tunnel Workers, Local 1208 and The North West Company Inc.

Bargaining Unit

A unit of employees of The North West Company Inc. comprising all employees employed at Happy Valley-Goose Bay, Labrador save and except Manager, Assistant Manager, General Merchandise Manager, Office/Customer Care Manager, Department Manager (Meat/Deli), Department Manager (Food/Grocery), Loss Prevention Officer and Department Bonus Supervisor, Employees employed at Northern Rent to Own Furniture, Employees engaged at the Burger King Franchise, Employees engaged at Quick Stop, Non-working Supervisors and those above the rank of Non-working Supervisor.

18. International Union of Operating Engineers, Local 904 and AOC Brown & Root Canada Ltd.

Bargaining Unit

A unit of employees of AOC Brown & Root Canada Ltd. comprising all employees employed as Warehouse/Pipeyard Technicians at the Hibernia Warehouse and Pipeyard in Donovan's Industrial Park save and except Manager, Superintendents, Office Personnel, Administrative Assistants, Warehouse Operations Coordinators, Pipeyard Operations Coordinators, Material Controller Assistants, Non-working Foreman and those above the rank of Non-working Foreman.

19. United Food and Commercial Workers, Local 1252 and IPL Production Limited.

Bargaining Unit

A unit of employees of IPL Production Limited comprising all employees employed by the Employer at its Cochrane pond farm operations save and except Site Manager, Non-working Foreman and those above the rank of Non-working Foreman.

20. Newfoundland and Labrador Association of Public and Private Employees and P & S Investments Ltd.

Bargaining Unit

A unit of employees of P & S Investments Ltd. comprising all employees save and except Manager employed by the Employer at its Mary Brown's Chicken Outlet, Trans Canada Highway at Deer Lake.

21. Transport and Allied Workers Union, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Hickman Motors Limited.

Bargaining Unit

A unit of employees of Hickman Motors Limited comprising all employees employed by Hickman Motors Limited (Carbonear Branch) in the Utility/Washbay Department save and except service department, parts department, sales staff, office staff, managers and those above the rank of working foreman.

22. International Association of Heat & Frost Insulators & Asbestos Workers, Local 137 and Atlantic Fireproofing Limited.

Bargaining Unit

A unit of employees of Atlantic Fireproofing Limited comprising Insulators.

23. Newfoundland and Labrador Association of Public and Private Employees and Victorian Order of Nurses, Corner Brook.

Bargaining Unit

A unit of employees of Victorian Order of Nurses, Corner Brook comprising all employees save and except Executive Director, Office Manager, Day Centre Co-ordinator and Nurses.

24. Fish, Food and Allied Workers Union (FFAW/CAW) and Fogo Island Co-operative Society Limited.

Bargaining Unit

A unit of employees of Fogo Island Co-operative Society Limited comprising all employees save and except Office Staff, Non-working Foreman and those above the rank of Non-working Foreman employed at fish/shellfish processing plants located on Fogo Island and operated by Fogo Island Co-operative Society Limited.

25. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 740 and Petroleum Services Ltd.

Bargaining Unit

A unit of employees of Petroleum Services Ltd. comprising all employees including Foreman and General Foreman save and except Management and Office Personnel.

26. United Brotherhood of Carpenters and Joiners of America, Local 579 and Chester Dawe Limited.

Bargaining Unit

A unit of employees of Chester Dawe Limited comprising all employees save and except Store Manager and Summer Students employed by the Employer at its Kelligrews Store.

27. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 764 and Marid Industries Limited.

Bargaining Unit

A unit of employees of Marid Industries Limited comprising Ironworkers.

28. Newfoundland and Labrador Association of Public and Private Employees and Grace Sparkes House.

Bargaining Unit

A unit of employees of Grace Sparkes House comprising all employees save and except Administrator and Administrative Assistant.

29. United Brotherhood of Carpenters and Joiners of America, Local 579 and Chester Dawe Limited.

Bargaining Unit

A unit of employees of Chester Dawe Limited comprising all employees save and except Store Manager and Students employed by the Employer at its Goulds Store.

30. Newfoundland and Labrador Association of Public & Private Employees and Southern Shore-St. Mary's Bay Community Development Association.

Bargaining Unit

A unit of employees of Southern Shore-St. Mary's Bay Community Development Association comprising all employees employed at Ability Works Employment Centre, 198 Water Street, St. John's save and except Manager.